

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2362 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

SHRIMATI LAXMIBEN @ LACHHI SYANI JIYOMAL SINDHI

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR JOSHI, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 06/12/1999

ORAL JUDGEMENT

#. Commissioner of Police, Ahmedabad City, Ahmedabad, by virtue of an order dated March 4, 1999, passed under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 ("PASA Act" for short), detained the petitioner on the ground that he is a bootlegger and that in order to pursue his activities, he is using force.

#. The detaining authority took into consideration

four offences registered against the petitioner under Bombay Prohibition Act and statements of two witnesses regarding two incidents dated 21st February, 1999 and 25th February, 1999 and arrived at a subjective satisfaction that the incidents narrated by the witnesses and the apprehension shown by the witnesses qua the petitioner are correct and there is need for exercise of privilege under Section 9(2) of the PASA Act and, ultimately, passed the order of detention.

#. The petitioner has approached this Court with this petition challenging the order of detention mainly on the ground that the statements of witnesses in respect of unregistered offences which are relied upon by the detaining authority were recorded by the sponsoring authority on 3rd and 4th March, 1999. The statements were verified by the detaining authority on 4th March, 1999 and the order was passed on that very day, i.e. on 4th March, 1999 and the subjective satisfaction, therefore, arrived at by the detaining authority could not have been genuine as there was no time for the detaining authority to arrive at a subjective satisfaction after examining the relevant aspects.

#. Ms. Subhadra Patel has placed reliance only on the above ground and urged that the petition may be allowed. Ms. Patel also contended that, although the documents were demanded by making a representation, the same have not been supplied to the petitioner. This has also deprived the petitioner of the right of making an effective representation.

#. Mr. Joshi, learned Assistant Government Pleader appearing for the respondents, submitted that the representation dated 24th July, 1999 was considered and rejected by the detaining authority on 28th July, 1999 itself. He, however, on being asked pointedly, submitted that the documents demanded by the petitioner were not supplied to her.

#. Having regard to the facts of the case, in light of the rival side contentions, both the grounds pressed into service by the learned advocate for the petitioner would render the detention order unsustainable.

#. It is settled proposition of law that, if the relevant documents are not supplied to the detenu, the order stands vitiated as it deprives the detenu of right of making an effective representation, as contemplated in Article 22(5) of the Constitution. The undisputed fact is that documents have not been supplied.

#. As regards the other ground, the statements of the witnesses which are relied upon by the detaining authority were recorded by the sponsoring authority on 3rd and 4th March, 1999. The statements came to be verified on 4th March, 1999 and the order was passed on that very day. The detaining authority exercised the powers under Section 9(2) of the PASA Act and claimed privilege. The authority while exercising such powers has to strike a balance between public interest and the right of the detenu of making an effective representation after getting full particulars. It is expected of the authority, therefore, to examine the veracity of the allegations made and apprehension shown by the anonymous witnesses. For this purpose, the authority has to look for some cogent material. This is bound to consume some time. In the instant case, one of the statements is recorded on 4th March, 1999, verified on the same day and the order is also passed on the same day. In absence of any affidavit in reply by the detaining authority, this Court is at loss to appreciate how the authority could have examined the genuineness of the fear expressed by the witnesses and could have exercised the powers under Section 9(2). There was no time lag between verification of statements of witnesses and passing of the order of detention which could have enabled the detaining authority to apply mind to the question of exercise of power under section 9(2) of PASA Act. There does not appear any material other than the statements of witnesses, which could have been considered by the detaining authority to arrive at a subjective satisfaction about correctness and genuineness of the facts stated in the statements of witnesses. The subjective satisfaction recorded by the authority for need of exercise of powers under Section 9(2) of PASA Act cannot be said to be genuine, legally. The order of detention based on it, therefore, cannot be sustained and deserves to be quashed.

#. In view of the above discussion, the petition deserves to be allowed and is allowed. The order of detention dated 4th March, 1999, in respect of the petitioner-Shrimati Laxmiben @ Lachhi Sayani Jiyomal Sindhi hereby quashed and set aside. The petitioner-detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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